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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,242	05/15/2001	Ryohei Sato	14632	8991
23389 7590 07/16/2007 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER DANIEL JR, WILLIE J	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/855,242

Applicant(s)

SATO, RYOHEI

Examiner

Willie J. Daniel, Jr.

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


CHARLES N. APPIAH
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant's arguments filed 20 June 2007 have been fully considered but they are not persuasive. The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the comments in this section and Final Action mailed on 20 March 2007).
2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's argument of claim 10 on pg. 2, section I., 3rd paragraph, "...does not start originating a new call for voice communication with a remote cellular telephone set other than the call used by the cellular telephone set to perform the sub-communication means when the channel quality of the sub-communication means has deteriorated to not more than a predetermined level...", the Examiner respectfully disagrees. Applicant has failed to appreciate the combination of well-known prior art Tokoro and Tsai that clearly discloses the claimed feature(s) as would be clearly recognized by one of ordinary skill in the art. In particular, Tokoro discloses the features control means for, causing said cellular telephone transceiver means to start originating a new call for voice communication with a remote cellular telephone set (see col. 14, lines 30-51), where turning off the television-telephone when moving from one room to another to temporarily suspend the television conversation and allowing or continuing a telephone conversation based on audio signals teaches of deterioration of the channel or signal to not more than a predetermined level. As a note, turning off the television or moving from room to room causes deterioration or degradation of the signal between the television and portable telephone thus utilization of an image display is not necessary at that particular instance.; said new call being other than a call used by the cellular telephone set to perform sub-communication with the accessory (see col. 14, lines 30-51), where there is one call type of television-telephone mode and another call type of telephone mode in which the system can switch (or initiate) between conversation modes. As further support in the same field of endeavor, Tsai discloses the feature(s) control means for, causing said cellular telephone transceiver means to start originating a new call when the channel quality of said sub-communication means has deteriorated to not more than a predetermined level (see col. 2, lines 54-58; col. 5, lines 10-39; Figs. 2-3 and 5), where the device switches operating modes according to energy statistics when monitoring exchanged data, if the device is operated in data exchange mode (PCM mode, used with fax/modem data) and silence is detected or speech is encoded according to energy statistics the operation is switched to operate in voice mode. For example, the method switches the device from a data transfer mode to a voice mode if the frames counter exceeds a preset frames counter threshold. Therefore, the combination of Tokoro and Tsai as well as other applied reference(s) more than adequately meets the claim limitations.

3. Regarding applicant's argument(s) of claims 11-20, the claims are addressed for the same reasons as set forth above and as applied in each claim rejection of the Final Action.